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Interim co-lead counsel for plaintiffs and the proposed class

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re SONY VAIO COMPUTER
NOTEBOOK TRACKPAD
LITIGATION

Civil No. 09-CV-2109-BEN-RBB

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PLAINTIFFS'
CONSOLIDATED OPPOSITION TO
DEFENDANTS SONY'S AND BEST
BUY'S MOTIONS TO DISMISS**

[ORAL ARGUMENT REQUESTED]

Date: June 21, 2010
Time: 10:30 a.m.
Judge: Hon. Roger T. Benitez
Courtroom: 3

DEMAND FOR JURY TRIAL

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE pursuant to Rule 201 of the Federal Rules of Evidence and
3 related authority Plaintiffs Ronald Flynn and Christina Egner (“Plaintiffs”) request the Court take
4 judicial notice of the following documents attached hereto as Exhibits A and B:

5 **Exhibit A: Best Buy Forum posting dated December 11, 2008 by Best Buy Agent**
6 **Aaron, Geek Squad Community Connector, on**
7 **<http://forums.bestbuy.com>.**

8 **Exhibit B: Official Judicial Council of California Form PLD-C-001(2), CAUSE**
9 **OF ACTION - Common Counts.**

10 Under the Federal Rules of Evidence, a judicially noticed fact is an adjudicative fact “not
11 subject to reasonable dispute in that it is either (1) generally known within the territorial
12 jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to
13 sources whose accuracy cannot reasonably be questioned.” Federal Rule of Evidence 201(a)-(b).
14 It is proper for courts to review judicially noticed facts in considering motions to dismiss. *See*
15 *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (judicially noticing webpages attached to
16 motion to dismiss under the incorporation by reference doctrine). A court should take judicial
17 notice “if requested by a party and supplied with the necessary information.” Federal Rule of
18 Evidence 201(d).
19

20 The court can take judicial notice of Exhibit A, which is a webpage posting by an
21 employee of defendant Best Buy on Best Buy’s own website message forum. Judicial notice is
22 proper because its accuracy cannot reasonably be questioned because the representation is from a
23 Best Buy employee on Best Buy’s own website. Judicial notice of Exhibit B is proper because
24 the Judicial Council of California Form, PLD-C-001(2), CAUSE OF ACTION - Common
25 Counts is an official document not subject to reasonable dispute and its accuracy cannot
26 reasonably be questioned.
27

28 For the above reasons, plaintiffs respectfully request the Court take judicial notice of

Exhibits A and B.

DATED: June 7, 2010

DOYLE LOWTHER LLP

s/ John Lowther, Esq.

Attorney for plaintiffs
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EXHIBIT A

hockeycanuckjc SUPER
Valued Contributor

Posts: 2,194
Registered: 11-10-2008

0

Re: Can Sony require Best Buy to return a laptop to them for repairs?

12-08-2008 04:14 PM

Options

There are lots of great FREE alternatives to the big stuff out there that work 100% with Windows Vista and does not require a paid subscription to use them.

Some programs I like that are FREEWARE antivirus programs:

AVG Antivirus 8.0
Avast Antivirus
Avira Anti-Vir personal edition

Freeware Spyware / Adware removers:

Ad Aware
Spybot Search and Destroy
Spyware Blaster

These are some of CNET Download.com's highest rated programs and they are all free for personal use **with** no payment necessary.

For Microsoft Office, there is an excellent alternative to Microsoft Office called OpenOffice.org. Its 100% compatible with all your word , excel and powerpoint files and it does all the same things Microsoft Office 07 does except its free 😊

Finally on the Photoshop side, I use an excellent freeware alternative to Adobe Photoshop called "The GIMP" it supports plugin like effects similar to Photoshop and Paint Shop Pro and its interface is user friendly.

Hopefully this helps.

All these programs can be obtained on <http://www.download.com>

CNET also has excellent tutorials on their website on how to use these programs.



[Glitter Graphics](#)

Message 4 of 11 (3,566 Views)

Reply

tedIn
New Member



Posts: 7
Registered: 12-08-2008

0

Message 5 of 11 (3,547 Views)

Re: Can Sony require Best Buy to return a laptop to them for repairs?

12-08-2008 10:39 PM

Options

Yes, I have and use most of the freeware you mentioned. I do prefer trend micro antivirus on my vista system, but use AVG on my xp laptop. I tried openoffice, and while it is a good program, I still prefer ms office. I use GIMP for some of the filters which I prefer over the photoshop filters, but I use photoshop for some of it's features which seem better than GIMP.

Do you have an opinion concerning my question about "Sony requiring Best Buy to return my laptop to them for repairs"?

Reply

Aaron-GS ADMIN
Community Connector

Posts: 1,058
Registered: 09-29-2008

1

Re: Can Sony require Best Buy to return a laptop to them for repairs?

12-11-2008 04:34 PM

Options

Hey tedIn,

Because our service centers are factory authorized repair facilities for most products we sell, Best Buy® does not normally ship products directly to the manufacturer for repairs. There are some notable exceptions, however, and some manufacturers may require that repairs sought on specific models be addressed by one of their own in-house technicians. Simply put: if Sony doesn't want Best Buy® technicians working on a specific computer, we need to ship it to them for repairs.

How we determine where your product needs to be shipped though is a fairly simple process. When you bring a product into your local store, Geek Squad® agents enter basic model and serial number information into a repair tracking program. This program not only tells them where it needs to be shipped, but provides an estimated return date as well.

Hope this helps you out!

Agent Aaron

EXHIBIT B

EXHIBIT B

PLD-C-001(2)

SHORT TITLE:	CASE NUMBER:
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CAUSE OF ACTION—Common Counts

(number)

ATTACHMENT TO ☐ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

CC-1. Plaintiff (name):

alleges that defendant (name):

became indebted to ☐ plaintiff ☐ other (name):a. ☐ within the last four years(1) ☐ on an open book account for money due.(2) ☐ because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff.b. ☐ within the last ☐ two years ☐ four years(1) ☐ for money had and received by defendant for the use and benefit of plaintiff.(2) ☐ for work, labor, services and materials rendered at the special instance and request of defendant and for which defendant promised to pay plaintiff.☐ the sum of \$☐ the reasonable value.(3) ☐ for goods, wares, and merchandise sold and delivered to defendant and for which defendant promised to pay plaintiff☐ the sum of \$☐ the reasonable value.(4) ☐ for money lent by plaintiff to defendant at defendant's request.(5) ☐ for money paid, laid out, and expended to or for defendant at defendant's special instance and request.(6) ☐ other (specify):

CC-2. \$ _____, which is the reasonable value, is due and unpaid despite plaintiff's demand,

plus prejudgment interest ☐ according to proof ☐ at the rate of _____ percent per year

from (date):

CC-3. ☐ Plaintiff is entitled to attorney fees by an agreement or a statute☐ of \$☐ according to proof.CC-4. ☐ Other:

Page _____

Page 1 of 1